

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No: 201017541

Issue No: 4031, 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 15, 2010

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon Claimant's request for a hearing filed on January 20, 2010. After due notice, a hearing was held on March 15, 2010. The Claimant was present and testified. [REDACTED], Claimant's girlfriend, also testified on behalf of Claimant. Renee Jones appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant filed for SDA & MA on September 11, 2009. Claimant requested MA and SDA retroactive to June, 2009.
2. Claimant is 6'3" tall and weighs 257 pounds.
3. Claimant is right handed.
4. Claimant is 46 years of age.
5. Claimant's impairments have been medically diagnosed as right ankle fracture (February, 2009) with open reduction internal fixation, hypertension, lower back pain, post-traumatic arthritis in ankle, and decreased vision.

6. Claimant's physical symptoms are low back pain, pain in right ankle (heel up to knee, worse in bad weather, 6-10/10), weakness, sleep disturbances (sometimes 2-3 hrs/night, wakes at 4 a.m., wakes at night from pain and discomfort has to sleep on back), fatigued, excessive sweating, headaches, shortness of breath (without HBP medication), swelling in foot and ankle, and wears pressure stockings overnight.
7. Claimant has been hospitalized on the following dates:
 - a. [REDACTED] – initial injury
 - b. [REDACTED] – infection right armpit and under chin
 - c. [REDACTED] – arthroscopic surgery – outpatient procedure, [REDACTED] to take out hardware.
 - d. [REDACTED] – open reduction
 - e. [REDACTED] – external fixator
 - f. [REDACTED] – Rt thigh and rt chest infection
 - g. [REDACTED] – Hypertension (3 days)
8. Claimant takes the following prescriptions:
 - a) Lopressor – HBP
 - b) Hydrochlorothyzide – HBP
 - c) Vicodin extra strength – every 6 hours, off in 9/09, now back on for a month
 - d) Motrin – 800 mg 2-3x/day and extra strength Tylenol
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a high school education + 12 credits short of degree (civil & arch. Engineering).
11. Claimant is able to read, write, and perform basic math.
12. Claimant last worked in 2007 in a temporary position making glue for auto makers (sit/stand, lifting 5 lbs, bend/stoop). Claimant left because the position ended.
13. Claimant has prior employment experience working in warehouse and factories doing shipping and receiving, inventory (lifting up to 20-50 lbs, standing, bending/stooping, climbing) and as a supervisor position at a bowling alley (standing/walking, 10 lbs, lifting).
14. Claimant testified to the following physical limitations:
 - Sitting: 1 hour and then has to stretch
 - Stand: minutes before in pain. Now not weight bearing
 - Walk: 200 ft
 - Bend/stoop: impossible right now.
 - Lift: can lift a gallon of milk.

15. Claimant testified that he has difficulty washing, bathing, getting dressed and has difficulty getting into the bathtub.
16. Claimant performs household chores such as folding clothes. Claimant has to ascend 5 stairs to get into his household. Claimant is unable to walk into the basement. Claimant's girlfriend does all other household chores.
17. Claimant testified that he is currently using crutches to ambulate outside the house. Claimant currently has a soft splint cast. Claimant has also been prescribed a 4 prong cane and a walker. Claimant's ankle and foot are constantly swollen and he testified that he keeps them elevated about 70% of time.
18. The Department found that Claimant was not disabled and denied Claimant's application on October 19, 2009
19. Medical records examined are as follows:

██████████ Podiatrist Medical Exam Report (Exhibit A)

HX: Severe traumatic ankle fracture with post traumatic painful arthritis right ankle.

CURRENT DX: Painful hardware removal right ankle.

TESTING: Severe denuded and decreased joint space with osteophytic changes.

CLINICAL IMPRESSIONS: Deteriorating. Temporary disability - expected to return to work 7-12 months.

PHYSICAL LIMITATIONS: Lifting less than 10 lbs. Stand/walk less than 2 hours in 8 hour day. No pulling (except when sitting, no use of left foot/leg for operating foot controls.

MEDICAL FINDINGS: Pt having trouble walking due to right foot surgery. Can use left foot as normal.

NEEDS in HOME: Help cooking & cleaning.

██████████ Hospital Admission (Exhibit 1, pp. 11-13)

DISCHARGE DX:

1. Recent methicillin resistant staphylococcus abscess
2. Right ankle fx status post open reduction internal fixation following fall in 3/09 and ankle fracture
3. Hx of Hypertension but hypotensive on this visit to hospital

██████████ Surgery (Exhibit 1, p. 25)

DX: Right ankle malunion secondary to right ankle fx with significant soft tissue injury. Status post external fixator frame fixation.

PROCEDURE: Correction of malunion. Open reduction-internal fixation of right ankle.

██████████ Orthopedic Surgeon notes (Exhibit 1, p. 14-15)

– Findings are consistent with continued displacement and posterior displacement of the distal fibular fragment as well as slight distraction at the medial malleolus. Open reduction advised.

██████████ ER Visit (Exhibit 1, p. 32)

Right heel pain for last 2 days. Hx of trimalleolar fracture-dislocation on ██████████ which was closed, reduced and placed in a splint. Returned to ER on ██████████ for syncopal episode for which he was admitted to the hospital. Evaluated by orthopedics on ██████████ and was found to be re-dislocated and was taken to emergency OR for a closed reduction and application of external fixator. Plans for open reduction after decrease in swelling.
PLAN: The pt will maintain nonweightbearing to the right lower extremity.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.1 *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

20 CFR 416.905.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, under the first step, the Claimant last worked in 2007. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a "severe impairment" 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Examples include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing and speaking;
- (3) Understanding, carrying out, and remembering simple instructions.
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting.

20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec'y of Health and Human Servs*, 774 F.2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence showing diagnoses of severe right ankle fracture with open reduction internal fixation and post traumatic arthritis in ankle. Claimant also has been placed on physical limitations by his podiatrist. The medical evidence has established that Claimant has physical impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant’s impairments under step three.

3. Listed Impairment

After reviewing the criteria of listings 1.02 *Major dysfunction of a joint* and 1.04 *Disorders of the spine*, the undersigned finds the Claimant’s medical records substantiate that the Claimant’s physical impairments meets or is medically equivalent to the listing requirements. 20 CFR 404, Appendix 1 to Subpart P, § 1.02 describes the listing as follows:

Major dysfunction of a joint(s) due to any cause:
Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and finding on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle) resulting inability to ambulate effectively, as defined in 1.00B2b.

Or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c

20 CFR 404, Appendix 1 to Subpart P, § 1.00B2b describes what it means to Ambulate Effectively:

(2) *To ambulate effectively*, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities such as shopping and banking and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The inability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

In the present case, Claimant testified that at the time of hearing, he was unable to walk except with the use of crutches. In addition, Claimant's treating doctor indicated that Claimant was having difficulty walking. Claimant's girlfriend testified that she performed all the household chores. Claimant's physician indicated that Claimant would need help with cooking and cleaning due to his limited weight bearing. It is doubtful that at the time of the hearing, Claimant would have been able to walk a block at a reasonable pace. Claimant's physician indicated that his impairments were likely to last 7-12 months from the date of the hearing. Furthermore, Claimant suffers from post-traumatic arthritis of the ankle and takes prescription medication to deal with the pain.

Considering all of the above, the undersigned finds the Claimant's medical records substantiate that the Claimant's physical impairments meets or are medically equivalent to the listing requirements of 1.02 as Claimant is limited in his ambulation. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA

benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

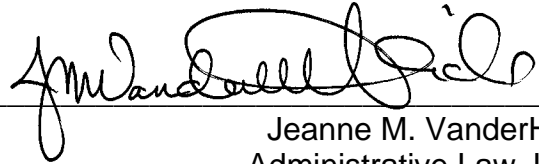
In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA and SDA programs.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "disabled" for purposes of the Medical Assistance program and the State Disability Program including any retroactive benefits applied for.

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the September 11, 2009 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in January, 2011.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/28/10

Date Mailed: 07/30/10

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JV/dj

cc:

[REDACTED]